

## REMARKS

This Response is in response to the Final Rejection mailed March 3, 2008. The Examiner's comments in the Final Rejection have been carefully considered.

It is respectfully submitted that the method of the invention may not be fully appreciated by the Examiner and what the differences are with reference to the method of Atlas. Attached is a comparison chart of the specific method steps of claim 1 and the steps taught by Atlas.

Thus, the method of the invention has nothing to do with either specific notes or tones of an audio signal nor with a grouping of tones. The invention can be applied to any audible signal, even to a noise signal that has no specific note or sequence of notes. The invention teaches the step of forming a plurality of groups of the value of each individual field and at least two values of the fields adjacent to this field. The groups are formed consisting of a number  $n$  of spectral components and storing these components in an array with a multiplicity of fields.

There is no grouping step in Atlas. Atlas teaches a weighting procedure applied to the matrix values. The weighting is based on a perceptual model. According to the present application a "weighting" is applied to the array values by forming a plurality of groups.

Atlas also fails to teach the step of assigning a priority to the individual groups in accordance with specific properties of the groups.

Atlas teaches the step of ordering the signals (according to priority) with respect to their perceptual relevance depending on modulation frequency and base-transform frequency.

The terms “group” and “field” are different to the term “musical note”. A pure musical note defines a specific frequency, i.e. the standard pitch “a” corresponds to the frequency of 440 Hz. Any musical note of an instrument consists of a plurality of frequencies which are responsible for the characteristic “tone” of an instrument.

A field of an array according to the present application defines a value of a frequency comprised in a sound signal at a given time. Grouping of the fields results in a pure mathematical value for determining the “change” of the audio signal. The “change” of the signal is greater the greater the amplitudes of the group’s values and/or the greater the amplitude differences of the values of a group and/or the closer the time dimension of the values of the group is to the current time.

As is evident from the foregoing, and the attached comparison chart, the steps, features and functionalities recited in the method steps of claim 1 of the subject application do not share identity with the method according to Atlas. It is well established that for a prior art reference to anticipate in terms of 35 U.S.C. § 102, every element of the claimed invention must be *identically* shown in the single reference. These elements must be arranged as in the claim under review. *In re Bond*, 910 F. 2d 831 (Fed. Cir.1990). Atlas clearly fails to provide the necessary teaching to anticipate every method step of claim 1, as is evident from the chart. For this reason, it is respectfully requested that the Examiner’s rejection of claims 1-3 and 7 under 35 U.S.C. § 102 (e) be reconsidered and withdrawn.

Claims 4-6 have been rejected as being obvious and, therefore, unpatentable on the basis of Atlas in view of Levine et al., for reasons set forth in paragraph 4 of the Office Action. In making this rejection, the Examiner continues to rely on Atlas for the reasons used in rejecting claims 1-3 and 7. However, as noted, since Atlas fails to supply that teaching that the Examiner relies upon, the proposed combination, even if made, would still not result in the subject matter defined in claims 4-6. Common sense, whether guided by hindsight or not, clearly plays a role in a obviousness analysis under *KSR International Co. v. Teleflex, Inc.* KSR expressly instructs that it remains legally insufficient to conclude that a claim is obvious just because each feature of a claim can be independently shown in the cited art. In this case, of course, the prior art even fails to teach the features recited in claim 1, for reasons discussed above. Thus, establishing that a claimed combination is not “predictable use of prior art elements according to their established functions” is particularly important in reconsidering the obviousness rejection.

KSR requires that an Examiner provide some articulated reasoning with some rational underpinning to support a legal conclusion of obviousness. Thus, for a proper rejection a reason must be identified that would have prompted a person of ordinary skill in the relevant art to combine the elements in the way the claimed new invention does. There is nothing in these references that suggests why such combination would have been prompted. Also, explicit rationale must be given of “the apparent reason to combine the known elements in the fashion claimed”, including a detailed explanation of “the effects of demands known to the design community or present in the market place” and “the background knowledge possessed by a person having ordinary skill in the art.” However,

the Office Action contains no such rational or explanations and, it is respectfully submitted, that anything less than such an explicit analysis is not sufficient to support a *prima facie* case of obviousness under KSR. Mere conclusory assertions by the Examiner that it would have been obvious to combine certain references is not adequate or sufficient under KSR, particularly, as here, where the combined art falls far short of the claimed combination. The Court left undisturbed the requirement that an Examiner must present "convincing line of reasoning supporting a rejection." MPEP § 2144.

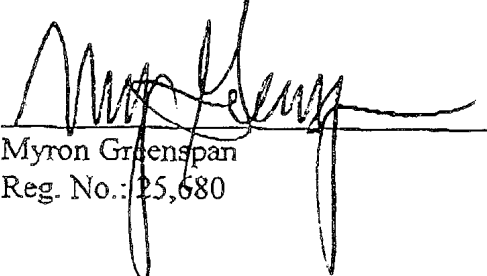
In view of all of the foregoing, it is respectfully submitted that it would not be obvious to combine Atlas and Levine as proposed by the Examiner. However, even if such proposed combination were to be made it would still not result in the subject matter of claims 4-6. The Examiner is respectfully requested to reconsider and withdraw the rejections. Early allowance and issuance of this application is, accordingly, respectfully solicited.

The Commissioner is hereby authorized to charge payment of the fees associated with this communication and during the pendency of this application, such as an extension or issue fee if mistakenly not paid or insufficient funds, and/or any other fee due but not paid by check, etc., or credit any overpayment to Deposit Account No. 10-0100.

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Lackenbach Siegel LLP  
One Chase Road  
Scarsdale, New York 10583  
(914) 723-4300  
[mgreenspan@LSLLP.com](mailto:mgreenspan@LSLLP.com)

Respectfully submitted,

  
Myron Greenspan  
Reg. No.: 25,680